IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 247 of 2004

(From the judgment and order dated 07.08.2004 passed by learned Sessions Judge, Dhenkanal in S.T. Case No. 191 of 2001)

AFR **Sarat Behera** **....** **Appellant**

-Versus-

State of Orissa **.....** **Respondent**

Advocate(s) appeared in this case through hybrid mode:

For Appellant : M/s. B.R. Mohanty, B.K. Raj, P.R. Mishra & M.K. Mohanty, Advocates

For Respondent : Mr. Suvalaxmi Devi, Addl. Standing Counsel

CORAM

THE HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

Date of Hearing :31.03.2026 :: Date of Judgment:07.04.2026

SASHIKANTA MISHRA, J.

Two persons — the present appellant and the original appellant No.1 faced trial in S.T. Case No. 191 of

2001 in the Court of learned Sessions Judge, Dhenkanal for committing the murder of one Sarat Naik along with other charges. Both were convicted under Sections 302, 201, 452, 324/34 IPC. They were sentenced to rigorous imprisonment for life and to pay fine of Rs.1,000/-, in default, to undergo RI for 3 months under Section 302 IPC, RI for 3 years and fine of Rs.500/-, in default, RI for 3 months under Section 201 IPC, RI for 3 years and fine of Rs.500/-, in default, RI for 3 months under Section 452 IPC and RI for one year under Section 324 IPC. Said judgment is impugned in the present appeal. Be it noted that during pendency of this appeal, the appellant No.1, Bhaskar Behera having died, the appeal has abated against him.

2. Prosecution case, briefly stated, is as follows:

On 23.12.2000 in village Badamunda under Balimi P.S. in the district of Dhenkanal, while the deceased Sarat Nayak was having his dinner in his home at about 8 p.m., both appellants being armed with stick and axe arrived there and dragged him outside and then left the place with

him. Wife of the deceased Kamali Naik went and informed her father-in-law, who went to the house of accused Bhaskar Behera and saw that both of them had assaulted the deceased by means of the aforementioned weapons and that the deceased was lying with bleeding injuries in front of their house. When the father of the deceased protested, both accused persons chased him and assaulted him with the same weapons causing injuries. He was taken to the hospital for treatment. The dead body of the deceased was not found at the spot thereafter despite search. On the next day morning at about 11 a.m., Kamali Naik went to Balimi Police Station and lodged a written report, basing on which Balimi P.S. Case No. 53 was registered under Sections 302/323/324/201/34 IPC followed by investigation. In course of investigation, the dead body was recovered from the well of a villager at the instance of the accused persons. Upon completion of investigation, charge sheet was submitted against the accused persons.



3. The trial Court framed four charges against the accused persons, namely 460/34 IPC, 302/34 IPC, 324/34 IPC and 201/34 IPC.

4. Accused persons took the plea of denial and false implication.

5. To prove its case, prosecution examined 10 witnesses and proved 16 documents. It also proved 6 material objects. Defence did not adduce any evidence either oral or documentary.

6. After analysing the evidence on record, the trial Court found a complete chain of circumstances proving the guilt of accused persons. As such, they were convicted and sentenced as already stated hereinbefore.

7. Heard Mr. B.R. Mohanty, learned counsel for the appellant and Ms. Suvalaxmi Devi, learned Addl. Standing Counsel for the State.

8. Mr. Mohanty assails the impugned judgment raising the following grounds;

A. The independent witnesses did not support the prosecution case and therefore, the version of other witnesses should not have been accepted by the trial Court.

B. The conduct of the deceased revealed that he was himself a hardened criminal and so also his father (deceased appellant) being involved in a series of criminal cases.

C. Only relatives of the deceased were examined.

D. Prosecution did not explain as to how the dead body of the deceased came to the well of Kedar Pradhan.

9. Per contra, Ms. Suvalaxmi Devi would argue that the strongest evidence on record is the 'last seen' evidence which is amply proved by the version of PW-5. Since she categorically stated that the accused persons being armed, dragged her husband while he was having dinner and soon thereafter, he was found dead, it was for the accused

persons to explain as to how he met with his death. Since they did not do so, the trial Court rightly treated this omission as an incriminating piece of evidence. Further, the recovery of the dead body from the well with a stone tied to its body is also a strong incriminating circumstance since the dead body itself was recovered at the instance of the accused. As regards the argument regarding examination of relative witnesses, Ms Suvalaxmi would argue that relatives cannot be expected to falsely blame someone and allow the actual offender to escape.

10. Before delving into the rival contentions, we deem it proper to independently analyse the evidence on record. The FIR was lodged by the wife of the deceased stating that while her husband was having dinner, both the accused persons being armed with stick and axe came to their house and dragged the deceased out. They also left with him. She having informed her father-in-law, the latter went and found his son lying dead with bleeding injuries in front of the house of the accused persons. The informant was examined

as PW-5. She has fully corroborated the FIR story. Nothing was brought out from her mouth in cross-examination so as to view her sworn testimony with suspicion. PW-4 is her father-in-law. He also corroborated the version of PW-5 fully and in material particulars. Significantly he is an injured witness being assaulted by both the accused persons at the spot where his son was lying dead. His injury has been proved. The dead body was found in the well belonging to Kedar Pradhan. The I.O. has proved the disclosure statement made by accused Sarat which led to discovery of the dead body. The dead body itself was found with a stone tied around, obviously to prevent it from floating to the surface. The trial Court listed the following as incriminating circumstances.

> "27. *Thus, the evidences discussed above, i.e. (a) the deceased was last found in the company of the accused persons on their front courtyard-cum-thrashing floor where there was blood patches, (b) the accused persons were armed with lathi and tangi, injuries were found on the body of the deceased, inflicted by such weapons of offence; (c) even P.W.4 found the accused persons dealing blows on the deceased; (d) soon thereafter, P.W.1 had seen the dead body of the deceased on the thrashing floor of the accused, (e) on the information of accused Bhaskar, while in police*

custody, the body was recovered from inside a well, tied by a stone; (f) the tangi was also recovered on the information of A.1. Bhaskar, (g) the lathi containing human blood recovered and seized from the house of the accused persons, amply complete the chain of evidence fully consistent with the guilt of the accused persons and inconsistent with their innocence."

On such basis, it was held that prosecution had proved its case against the accused persons and thus, they were convicted.

11. Now, we shall determine the correctness of the findings taking note of the grounds raised by the defence.

11.1. We do not agree with the contention that no conviction can lie unless independent witnesses support the prosecution case. There is no such legal principle. Even if the evidence of a solitary eyewitness is found to be credible, the Court can always base the order of conviction on such evidence. In the instant case, PWs. 1, 2 and 3, who are independent witnesses, turned hostile. Their evidence is therefore, practically of no value. But then, even if their evidence is brushed aside, other evidence can always be looked into. In fact, we find that the trial Court has relied

heavily upon the evidence of PW-5, who had last seen the deceased in the company of the accused persons shortly prior to his death. The trial Court also relied upon the evidence of PW-4, who being an injured witness himself had seen the assault on the deceased by the accused persons and of him lying dead with bleeding injuries. So, on the face of such clinching evidence being available on record, we find no justification to discard the same only because the independent witnesses turned hostile.

11.2. It has been argued that the deceased was himself a hardened criminal being involved in multiple criminal cases. Learned counsel for the appellant has drawn our attention to the admission of PW-4 in his evidence in this regard. We are however, not very impressed with this argument nor do we consider it a reason to interfere with the order of conviction. The Penal Code does not make any distinction between human beings when it comes to act of culpable homicide either amounting to murder or not amounting to murder. Even if the deceased was a hardened

criminal himself, it does not give a licence to any person to take the law into his own hands and commit his murder. The argument advanced in this regard is fallacious and hence, not acceptable.

11.3. Defence has argued that the evidence of PWs-4 and 5, who are father and wife respectively of the deceased, should not be accepted as being close relations and independent witnesses not having corroborated their versions, the possibility of false implication at their instance cannot be ruled out. This argument is not acceptable, firstly, for the reason that being close relations of the deceased, the witnesses would never wilfully implicate someone not complicit thereby allowing the actual offender to go scot free. Secondly, no reason is ascribed or suggested by defence while cross-examining these witnesses for false implication. The argument is therefore, not acceptable.

11.4. It has been argued vehemently that prosecution should have explained as to how the dead body of the deceased came inside the well in the first place. Further,

there being no witness to the so-called disclosure statement made by the accused before the I.O., his version alone cannot be accepted. It is seen that the dead body was initially found in front of the house (threshing floor) of the accused persons and subsequently, it disappeared. It is borne out from the evidence on record that subsequently the dead body was fished out from the well in presence of police and fire brigade. A stone was found to have been tied with a rope around the waist of the dead body. There is therefore, no dispute that the dead body was found from the well. There is also no dispute that a stone was tied with a rope around the dead body. We will briefly refer to the evidence of the autopsy surgeon, PW-7, who found as many as 15 injuries including 13 cut injuries on the body of the deceased. He stated that death was caused because of said injuries. He further deposed that the cut injuries could be caused by the sharp edge of *tangi* and other injuries by the *lathi*. So, the injuries are consistent with the prosecution case that the accused persons assaulted the deceased by means of stick and axe. While, according to defence, it is for



the prosecution to explain how the dead body came to be found inside the well we think that in the facts and circumstances, the reverse would apply. In other words, given the evidence that the deceased was last seen in the company of the accused persons and thereafter lying dead with bleeding injuries in front of their house, the onus shifts to them rather than the prosecution to explain how the dead body could be found in the well. What is highly significant is that a stone was tied to a rock around the dead body. This was obviously done to prevent the body from floating to the surface upon decomposition and thereby an act of concealment. Law is well settled in this regard. In the case of **Sucha Singh v. State of Punjab**[1], the Supreme Court held as follows;

> "*15. The abductors alone could tell the court as to what happened to the deceased after they were abducted. When the abductors withheld that information from the court there is every justification for drawing the inference, in the light of all the preceding and succeeding circumstances adverted to above, that the abductors are the murderers of the deceased.*

[1] (2001) 4 SCC 375



> *19. We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference."*

In view of the above discussion, it can be easily said that the accused persons having dragged out the deceased from his house and thereafter he being seen lying dead in front of their house with bleeding injuries, they must be held to have had the special knowledge regarding his whereabouts as no one else had seen the deceased thereafter. In the case of **Ram Gulam Chaudhary v. State of Bihar**[2], the Supreme Court held as follows:

> "*24. Even otherwise, in our view, this is a case where Section 106 of the Evidence Act would apply. Krishnanand Chaudhary was brutally assaulted and then a chhura-blow was given on the chest. Thus chhura-blow was given after Bijoy Chaudhary had said "he is still alive and should be killed". The appellants then carried away the body. What happened thereafter to Krishnanand Chaudhary is especially within the knowledge of the appellants. The appellants have given no explanation as to what they did after they took away the body. Krishnanand Chaudhary has not*

[2] (2001) 8 SCC 311

been since seen alive. In the absence of an explanation, and considering the fact that the appellants were suspecting the boy to have kidnapped and killed the child of the family of the appellants, it was for the appellants to have explained what they did with him after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference. We, therefore, see no substance in this submission of Mr Mishra."

Similarly, in the case of **State of Rajasthan vs. Kashi Ram**[3] the supreme Court relying upon the judgments in the case of **Ram Gulam Chaudhary** (supra) and **Sahadevan v. State**[4] held as follows:

"*23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be*

[3] (2006) 12 SCC 254
[4] (2003) 1 SCC 534

probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in Naina Mohd., Re. [AIR 1960 Mad 218 : 1960 Cri LJ 620]"

Be it noted that when asked during their examination under Section 313 Cr.P.C., both the accused persons offered no explanation in this regard. This tells its own story.

11.5. Another question that was raised is the absence of independent corroboration of the I.O.'s statement regarding recovery of the weapon of offence as well as discovery of the dead body from the well. According to the defence, the I.O's evidence could not have been relied upon. We do not agree at all. It is not an unalterable principle of

law that evidence of a police officer should not be accepted. In the instant case, the I.O. stated that the dead body was discovered at the instance of the accused, Bhaskar. Recovery of the dead body was independently proved by PW-6, who along with one Ainthu Nayak had gone into the well and brought out of the dead body.

In the case of **Govt. of NCT Delhi vs. Sunil and Others**[5] the Supreme Court held as follows;

> *".....official acts of the police have been regularly performed in a wise principle of presumption and recognized even by the Legislature. Hence, when a police officer gave evidence in the Court; that a certain article was recovered by him, on the strength of the statement made by the accused, it is open to the Court to believe the version to be correct if it is not otherwise shown to be unreliable....."*

Needless to mention, merely by questioning the correctness of the evidence of the I.O., defence has not been able to show as to how or for what reason he is to be treated as an unreliable witness. Of course, we would hasten to add that had there been no other evidence against the accused persons the matter would have been different. But here is a

[5] 2001 (1) CRIME 176

case, where there is ample evidence to show the complicity of the accused persons. Moreover, even ignoring the evidence of the I.O. for a moment, the fact that the accused persons had dragged the deceased from out of his house, killed him by means of weapons and thrown his dead body in front of their house initially, in all human probability, it is they who must have carried the dead body and thrown it inside the well taking further precaution by tying it with a piece of stone to avoid detection.

12. Thus, none of the grounds urged on behalf of the appellant to question the correctness of the impugned judgment finds favour with us. On the contrary, having perused the impugned judgment carefully we find that the trial Court has meticulously analysed the evidence on record to find a complete chain of circumstances pointing at the guilt of the accused. In view of what has been narrated hereinbefore, we find no reason to differ.

13. For the foregoing reasons therefore, the appeal is found to be devoid of merit and is therefore, dismissed. The

appellant- Sarat Behera being on bail, his bail bonds be cancelled and he be sent to custody forthwith to serve the remaining part of the sentence.

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(**Sashikanta Mishra, J)**

Manash Ranjan Pathak, J. I agree.

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(Manash Ranjan Pathak, J)

Orissa High Court, Cuttack
The 7th April, 2026/A.K. Rana, P.A.

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